

# The Gazette of India



EXTRAORDINARY

PART II—Section 3

PUBLISHED BY AUTHORITY

No. 183] NEW DELHI, WEDNESDAY, DECEMBER 31, 1952

## ELECTION COMMISSION

### NOTIFICATIONS

*New Delhi, the 31st December, 1952*

**S.R.O. 2132**—Whereas the election of Shri Jaidev Gadadhar of Mouza Tusgaon, Tahsil Mahasamund, District Raipur as a member of the Legislative Assembly of Madhya Pradesh from Basna Constituency has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act 1951 (XLIII of 1951) by Sardar Niranjansingh, son of Sardar Gyan-singh, of Mouza Basna, Tahsil Mahasamund, District Raipur.

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition;

Now, therefore, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal

BEFORE THE ELECTION TRIBUNALS, RAJNANDGAON

ELECTION PETITION No 117 OF 1952 FROM BASNA CONSTITUENCY OF RAIPUR DISTRICT

ELECTION CASE No. 2 OF 1952 OF RAJNANDGAON

#### Quorum

Shri S A Pande, M.A., LL.B.

Shri G W Chiplonker, M.A., LL.B.

Shri B R. Mandlekar, B.A., LL.B.,

Sardar Niranjansingh s/o Sardar Gyan-singh aged 33 years of mouza Basna T. Mahasamund D Raipur.

Chairman

} Members of the Tribunal.

Petitioner.

#### Vs

1. Shri Jaidev Gadadhar aged 35 of mouza Tusgaon T Mahasamund Distt Raipur

2. Vishnu Sharan s/o Bhalatdas aged 32 years, Vaishnav, Vaishnav Panth Karyalaya, West Sadar Raipur T and D Raipur

3. Sadanand s/o not known aged about 45 years, Agharia of mouza Bhawapur Post Basna T. Mahasamund D. Raipur.

} Respondents

#### ORDER

*(Passed this 23rd day of December, 1952).*

The petitioner Sardar Niranjansingh s/o Sardar Gyan-singh of mouza Basna Tahsil Mahasamund, District Raipur who had filed his nomination paper for the

election to the Legislative Assembly of Madhya Pradesh from the Basna Constituency, has filed this petition challenging the election of the respondent No. 1 Jaidev Gadadhar who was declared elected by the Returning Officer. The petitioner prays that the election of respondent No. 1 be declared wholly void.

2. The petitioner is admittedly an Elector in the Basna constituency entitled to stand as a candidate. His nomination paper was, however, rejected by the Returning Officer for reasons with which we are not concerned here since the rejection of his own nomination is not one of the grounds in the petition for his challenging the election. The respondent Jaidev filed his nomination paper on the due date. At the time of the scrutiny the respondent No. 1 Vishnu Salbora filed an objection stating that the respondent Jaidev was a partner of a firm doing business under the name and style of 'Basna Saraipali Grain Trading Company' and that this company was engaged in a contract to supply food grains to the State Government of Madhya Pradesh and, therefore, the respondent Jaidev incurred a disqualification under Section 7(d) of the Representation of the People Act. The Returning Officer overruled the objection and accepted his nomination paper. The petitioner claims that the nomination paper of respondent Jaidev was wrongly accepted by the Returning Officer, in as much as the partnership viz. 'Basna Saraipali Grain Trading Company' did not cease to exist in the eye of law on the date on which the nomination paper was filed in spite of the alleged intimation by the respondent Jaidev that he had ceased to be a partner of that firm. It is the contention of the petitioner that the firm was not a partnership at will and could not come to an end at least until the expiry of the period of one month which is provided in clause 12(1) of the agreement of the firm with the State Government. (Ex. E).

3. The respondent Jaidev Gadadhar submitted that on 25th October, 1951, he had intimated that he was not going to continue as a partner in the firm with effect from the new year of business viz. 1st November, 1951 and that his other partners consented to his retirement with effect from 1st November, 1951. He also contended that the agreement with Government was not hit by the provisions of Section 7(d) of the Representation of the People Act. His further submission was that the agreements with Government were seasonal and automatically expired with the end of the season viz. 31st October of each year. He thus contended that the previous agreement with the State Government had run out by efflux of time i.e. on 31st October, 1951 and that the State Government had entered into an agreement for the period beginning from 1st November, 1951, with another set of partners though they themselves styled them as doing business under the same name viz., 'Basna Saraipali Grain Trading Company'. The respondent had also pleaded estoppel in view of the admitted stand of the present petitioner in the beginning before the Returning Officer that the partnership firm had come to an end with the retirement of the respondent Jaidev which he retracted on the next day.

4. The respondent No. 2 supported the petitioner and prayed that the election of the respondent No. 1 be declared void on the ground of the improper acceptance of his nomination paper. Respondent No. 3 did not enter appearance.

5. We settled the following issues and the findings thereon are as below:—

2 (a) Whether before 15th November, 1951 respondent 1 had intimated (i) the other partners of the firm of Basna Saraipali Grain Trading Company, and (ii) the Deputy Commissioner that he would retire from the firm with effect from 1st November, 1951?—Finding. Yes; Yes;

(b) Whether the other partners of the firm had consented to his retirement with effect from that date?—Yes;

(c) Whether as a result respondent 1 had legally ceased to have any interest in the procurement contract with the State Government on 15th November, 1951?—Yes;

2. Whether the contract made by the firm with the State Government had come to an end on 31st October, 1951, by efflux of time, as contended by respondent No. 1?—No;

But on 1st November, 1951, a new agreement came into effect;

3. Whether the firm's contract with the State does not entail any disqualification under Section 7(d) of the Representation of the People Act, even if it were held that respondent 1's interest in that contract subsisted on 15th November, 1951?—It does entail disqualification if a partner;

4. Whether the result of the election has been materially affected by the acceptance of respondent 1's nomination paper?—Does not arise;

5. Relief and costs?—Petition dismissed.

6. *Issue No. 1(a), (b) and (c).*—At the outset we will decide as to whether this partnership was a partnership at will or not. The petitioner no doubt stated in his petition that the partnership was not a partnership at will. At the hearing however, his learned counsel Shri Pama, or conceded that the partnership agreement between the 10 partners, as per Ex. A-2, showed that it was a partnership at will. Under section 7 of the Partnership Act where no provision is made by contract between the partners for the duration of their partnership, or for the determination of their partnership, the partnership is "partnership at will". In the agreement Ex. A-2 the duration to which the partnership will continue has not been stated, nor is there any provision regarding the determination of the partnership. We are, therefore, of opinion that this partnership was a partnership at will.

7. Under Section 32(1) (c) of the Indian Partnership Act it is permissible to a partner where the partnership is at will to retire from the partnership by giving notice in writing to all the other partners of his intention to retire. The learned counsel for the petitioner relied to a large extent on the Partnership Act. We do not think that the reference to that section is apposite. Ex. R-8 is the letter of resignation which the respondent Jaidev sent to the Manager of his Firm on 25th October, 1951. The original of this is also on record as Ex. R-9. He does not desire to dissolve the partnership. He simply wants to retire from the partnership with effect from 1st November 1951. Maniklal (R.W. 3) who was admittedly managing the business of this partnership endorsed on the letter on 26th October, 1951, that the Firm had no objection to his retirement and that the other partners may be intimated about it. Sohanlal (R.W. 1) who was the servant of the Firm as manager has stated that he informed all the partners except Jagdishprasad of Bag Echra about this desire of respondent Jaidev to retire from partnership and that every one of them orally conveyed to him that they had no objection.

8. Maniklal himself went to the witness-box as (R.W. 3) and stated that within about 2 or 4 days of his receiving the document Ex. R-9, he informed Jagdishprasad also. There is no rebutting evidence and we see no reason to disbelieve these two witnesses. If the consent of all the partners was in fact not orally taken, at least the petitioner would have come forward and deposed that he did not receive any intimation nor did he consent to the retirement of Jaidev. Indeed it is evident from what he stated before the Returning Officer that he knew of the resignation of Jaidev. It also evidently shows that he had no objection to the retirement. It was not suggested at the hearing that the endorsement of Maniklal and the endorsement by Sohanlal on Ex. R-9 are not genuine and were not made at the time they purported to have been made. Ex. C which is an order of the Returning Officer accepting the nomination of respondent Jaidev mentions that an original letter was produced from the Manager of the Firm stating that Jaidev desired to disassociate from the partnership with effect from 1st November 1951 and that all the other partners had agreed to his retirement. We ourselves have referred to this original letter from the papers which we obtained from the Returning Officer.

9. Jaidev has examined himself as R.W. 1. He has stated that his share of capital which amounted to Rs. 1,250 was withdrawn by him some time before 15th November 1951. He went on to say further that even his share of profits which amounted to about Rs. 67 or so was also paid to him by the Managing partner of the Firm before 15th November 1951. We do not think that actual withdrawal of the share or of the profits before the date on which the nomination paper was filed, was absolutely necessary in order to terminate the status of the respondent Jaidev as a partner of the Firm. We, however, see no reason to disbelieve Jaidev especially because no attempt was made by the petitioner's counsel to expose the claim of Jaidev in this behalf. Apparently the petitioner relied more upon the legal effect of the evidence rather than upon the reliability of the evidence adduced by the respondent No. 1. It is then quite well established that the respondent Jaidev retired from the partnership Firm with effect from 1st November 1951. His retirement can be said to be both under Sec. 32(1)(a) as also under Sec. 32(1)(c).

10. Much stress has been laid by the learned counsel for the petitioner on the fact that the retirement of the respondent Jaidev from the Firm by his letter does not legally put an end to his status as a partner in the Firm, because, in first place, (a) no public notice of the retirement has been given and (b) no intimation to the Registrar of Firms has been given under Sec. 63 of the Partnership Act. It is not disputed that neither of these two things was done either by the respondent Jaidev or by the Firm. It seems to us that this is a matter which does not affect the status of the partner as such. It appears to us that the learned counsel for

the petitioner is confusing the question of the status of Jaidev as a partner continuing to be such and his liability to third parties or to certain penalties incurred by not doing certain prescribed acts. The partnership being at the will and the resignation having been accepted by all the partners the partnership must be deemed to have come to an end so far as the relations of partners *inter se* are concerned. We have already stated above that the case of Jaidev is a case of retirement under Sec. 32 of the Partnership Act. The failure to give a public notice of retirement entails the consequences mentioned in Sec. 32(3) of the Partnership Act. It is nowhere stated that the retiring partner will continue to be a partner if he does not do what is prescribed in Sec. 32(3). What is stated there is that he will continue to be liable on the contract i.e. the liability will be monetary or may be that the contract may be specifically enforced. But that is altogether a different thing.

11. It appears to us that it is the practice with grain procurement Firms to intimate to the State Government if any of the partners constituting the Firm of Government procurement agents retires or otherwise ceases to be a member of the Firm. In this case Ex. D is the information which respondent Jaidev sent to the Deputy Commissioner about his retirement from the Firm with effect from 1st November 1951 which had been accepted by the other members of the Firm. We, therefore, find it proved that the respondent 1 Jaidev intimated to all the other partners before 15th November 1951 that he was retiring from the partnership with effect from 1st November 1951 and that he also informed the Deputy Commissioner, Raipur to the same effect. We further find that the other partners consented to his retirement with effect from that date viz. 1st November 1951 and that as a result thereof the respondent No. 1 Jaidev ceased legally to have any interest in the procurement agency doing business under the name and style of 'Basna Saraipali Grain Trading Company'. Consequently we find that he was not under any disqualification mentioned in Sec. 7(d) of the Representation of the People Act.

12. *Issue No. 2.*—In this case we have to be very clear that there are two things involved. One is the relationship of the partners of the Firm 'Basna Saraipali Grain Trading Company's *inter se*. The other thing is the relationship of this Firm with the State Government. It was the claim of the respondent No. 1 Jaidev that the contracts with the State Government were seasonal and expired every year on 31st of October. This claim, however, we think is unsupportable in view of the agreement dt. 20th June 1950 (Ex. E). This is apparently the first agreement which was executed on behalf of the Firm 'Basna Saraipali Grain Trading Company' in favour of the State Government. The very first clause of this agreement is that during the period commencing from 1st November 1949 to the date of termination of this agreement under clause 12 of the agreement the agent (a Firm) will purchase for the Governor, food grains as may be specified by the Deputy Commissioner. Under clause 12 the agreement cannot be terminated by either party without giving to the other not less than one calendar month's notice in writing. This clearly shows that the agreement was not for a specific period beginning from 1st November 1949 to 31st October 1950. It is clear from the record that no agreement was executed on 1st November 1950 for the period commencing from the date Ex. G is a copy of the endorsements made by the Head Copyist on an application for copies made by the petitioner. It is specifically stated in the endorsement that only two agreements viz. one executed in 1950 and the other executed in 1952 are in the office. Both these are in our record. One to which we have already referred is Ex. E and the other is R-1. Jaidev himself admitted that he was not aware of any agreement executed for the supply of food grains for the period from 1st November 1950 to 31st October 1951. He had admitted that during this period this Firm consisting of the same 10 partners continued to be the procurement agents for the State Government in that period. It is thus very clear that the agreement with the State Government and the procurement agents was not restricted to one season only to be renewed afresh at the commencement of each procurement season. On the other hand the express provision in the agreement Ex. E is that the duration is not fixed, but is liable to be determined by a notice on either side. We do not, therefore, agree with the respondent No. 1 that the contract with the State Government terminated by efflux of time on 31st October 1951.

13. We have already referred to Ex. R-1. It is an agreement with the State Government made by the 'Basna Saraipali Grain Trading Company' on the one hand and the State Government, on the other. It is mentioned therein that the contracting Firm consists of four persons whose names have been given in the agreement itself. The duration of the contract of procurement agency under this document commenced from 1st November 1951. The petitioner has admitted this document (see his counsel's statement dated 8th November 1952). It is not suggested

that this document was a fraudulent document brought into existence with an ulterior motive viz. to overcome the objection to the nomination of the respondent No. 1 Jaidev. It was, however, urged that the agreement with the Firm consisting of four persons could not be made to take effect retrospectively. It was conceded at the hearing by Shri Tanaskar for the petitioner that if the same 10 persons had continued, it would have been open to them to give effect to this agreement retrospectively. But we have been unable to agree why the four persons who actually entered into the contract with the State Government could not give a retrospective effect to the agreement. It appears to have been the practice for the procurement agents to do the work of procuring and some time later on to execute a document in order to complete the departmental formalities. In the agreement Ex. E we find that the period commenced retrospectively from 1st November 1949 though the agreement was executed on 5th June 1950. Indeed the partnership Firm had started doing the work of procurement from 1st July 1949. (See R-5). It appears that when the first agreement was made it was stated to commence from the season when rice procurement particularly commences. Some other arrangement must surely have been made for the grain procurement from July 1949 till 1st November 1949. According to this practice then Government had a procurement agent from 1st November 1951. It has not been suggested that there were two procurement agents actually doing business under the same name from 1st November 1951. Indeed that appears to us impossible especially when four of the partners were common.

14. An amount of stress was laid by the learned counsel for the petitioner on the fact that there was no notice given by the Firm to the State Government as provided by clause 12 of the agreement Ex. E. It is true that no notice in writing has been given, but it appears to us very clear that a notice was given by Jaidev to the Deputy Commissioner, Raipur who was the person who entered into the agreement on behalf of the State Government. We are referring to Ex. D. The State Government thereafter entered into the agreement R-1. It is evident from the conduct that the State Government agreed to put an end to the procurement agency with the 10 persons mentioned in Ex. E and brought into existence a procurement agency with four persons mentioned in Ex. R-1. Notice is a thing which a party may waive by conduct. It cannot be suggested in this case that the State Government did not put an end to the agreement Ex. E. Further in our opinion the fact that the State Government was not notified as enjoined by clause 12 would not in any way affect the status of the respondent Jaidev as a partner in the Firm. The Government may be entitled under the law to hold Jaidev liable on the contract for such reliefs as are open to them in law; but it could not be said that on that account Jaidev would be a person who was included in clause (d) of Sec. 7 of the Representation of the People Act. Though, therefore, we do not hold that the contract with the Government had terminated by efflux of time, we all the same hold that after 1st November 1951 the respondent Jaidev had no interest as a member of the Firm in a contract for the supply of goods to the State Government or for execution of any works or performances of any services to it.

15 *Issue No. 3.*—It was contended by the respondent No. 1 that by his being a partner in the 'Basna Saraipali Grain Trading Company', he did not incur the disqualification mentioned in clause (d) of Sec. 7 of the Representation of the People Act. We do not think that his contention is correct. The partnership agreement shows that the partners were to supply the funds for the purchase of grain and it was this grain which they were under a liability to supply to the State Government at stated prices. It is idle in face of this and in fact of the various clauses of the agreement (Ex. E) to urge that the Firm cannot be said to be hit by Sec. 7(d) of the Representation of the People Act. In *Shanker Nanasaheb Karpe Vs. Maruti Sitaram Sawant and two others* the Election Tribunal held that a contractor who had purchased Government forest coupe and who was under the agreement bound to sell to Government the wood which he would cut was a person who held a contract for the supply of goods to Government and was hit by the provisions of Sec. 7(d) (The Gazette of India Extraordinary Part I, Sec. 1 dated 12th October 1952 in the matter of election petition No. 66 of 1951). The agreement (Ex. E) also enjoins upon the procurement agents to render certain services and to get some commission from the State Government for doing things enjoined in the agreement. It is, therefore, amply clear that Sec. 7(d) would be attracted in case respondent Jaidev is held to be in law the partner of the Firm in spite of his having retired with effect from 1st November, 1951. We may also add that the counsel for the respondent did not particularly meet this point in his arguments.

16. Issue No. 4.—In this view of the matter, issue No. 4 does not fall to be considered. We do not, therefore, think it necessary to refer *in extenso* to the argument of the learned counsel for the petitioner on this point. We may, however, mention that we feel the force of his argument that when the nomination of a person who was disqualified to file a nomination paper and seek election to the State Assembly, was accepted as a properly nominated candidate for the election, the result of the election must be deemed to be materially affected within the meaning of Sec. 109(c) of the Representation of the People Act. He also referred us to *S. Mula Singh Vs. Ch. Mangi Ram and Others*, wherein the nomination paper of a candidate who was below 25 years and thus disqualified from standing as a candidate was accepted, it was held that the election was materially affected in as much as the large number of voters who voted for this candidate were deprived of their legitimate right to exercise their franchise in favour of the candidate who was legally entitled to represent them in the Legislature. In this case respondent Jaidev secured large number of votes. This large number of votes has been deprived of their franchise. We do not agree with Shri T. P. Naik who appeared for the respondent No. 1 when he said that it may as well be that these voters may not have cast their votes at all and would not have thus materially affected the result of the election.

17. It has been contended by the respondent No. 1 that the petitioner having admitted before the Returning Officer that the partnership having come to an end by the retirement of one partner *viz.* Jaidev, it was not open to him to change and take the stand that in the eye of law the partnership still continued to subsist. We do not feel that we should pursue this argument. We simply say that the question of estoppel does not arise. There is nothing to suggest how the respondent No. 1 was compelled to change his position in any way in consequence of this stand of the petitioner before the Returning Officer.

18. In the result we conclude that this election petition must fail. We accordingly order that it be dismissed. As regards costs we think that the petitioner Niranjansingh should pay the costs of the respondent No. 1 which will include Rs. 150 as fees for his counsel. Niranjansingh and the other respondents will bear their own costs. Niranjansingh will also bear the printing charges of his petition in the State gazette. All costs shall be realisable from the deposit of Rs. 1,000 made by the petitioner with this petition without prejudice to any other remedies open to the parties.

23-12-1952.

(Sd.) G. W. CHITLONKER,  
Member.

19. The election of respondent Shri Jaidev who is declared elected to Madhya Pradesh Legislative Assembly from Barna constituency in Raipur District is sought to be set aside on the ground that the result of the election has been materially affected by the improper acceptance of his nomination form by the Returning Officer. The petitioner and respondent No. 1 Shri Jaidev had filed their nomination forms on 15th November, 1952; symbol of respondent No. 1 was "two bul's with etc etc". The respondent No. 2 has raised an objection to the nomination forms of both the petitioner and respondent No. 1 by filing carbon copies the selfsame objection against them, contending that they were the partners of a firm carrying on business under the name and style of "Basma Saraipali Grain Trading Company" of which there were in all 10 partners. The contention of the objector was that both of them were disqualified because they were the persons who had a share in a contract for the supply of goods to the Government of Madhya Pradesh as its procurement agents. The Returning Officer decided the objection of respondent No. 1 on 17th November, 1951, holding that "the respondent in support of his statement has filed an original letter of the manager of Basma Saraipali Grain Trading Company stating that this application dated 25th October, 1951 to dissociate himself from the partnership of the firm has been accepted by all the partners and that his association in the partnership has been terminated with effect from 1st November, 1951". Hence the nomination form of respondent No. 1 was accepted as perfectly valid. On 18th November, 1951 the same Returning Officer rejected the nomination form of the petitioner holding that there is no proof of acceptance by the Deputy Commissioner of respondent No. 1 Jaidev's resignation and that it has not been proved that the firm was dissolved by consent of all partners. On these grounds the petitioner's nomination form was rejected. However the contentions regarding the rejection of the nomination form of the Petitioner have not been made the grounds for setting aside the election of Respondent No. 1.

20. In the election petition before the Tribunal the petitioner contends that the nomination form of Respondent Shri Jaidev should have been rejected on

the ground that respondent Shri Jaidev has been a partner of the firm Basna Saraipali Grain Trading Company which entered into a contract on 28th June, 1950, with the Government of Madhya Pradesh as procurement agent at Basna and Saraipali procurement centres for the commission. This partnership continued to exist in law inspite of intimation by Respondent Shri Jaidev to manager of Basna Saraipali Grain Trading Company or to the Deputy Commissioner, Raipur. This partnership could not be terminated at will till the expiry of the month prescribed for the notice in writing by clause 12(i) of the agreement. Accordingly the respondent No. 1's status, right and liabilities continued till after 15th November, 1951 and thus the contract for the supply of goods to the Government of Madhya Pradesh was for his benefit or he had a share or interest in it and as such he was disqualified from being chosen as and for being a member of the Legislative Assembly of Madhya Pradesh as laid down in section 7(d) of the Representation of the People Act, 1951.

21. The respondent Shri Jaidev states that he had, by a letter date 25th October, 1951 addressed to the manager, conveyed that he had withdrawn from the partnership from 1st November, 1951, and thus terminated his relationship as a partner with the firm as it was a partnership at will formed on 1st July, 1949. Jaidev's further contention is that the agreement, dated 28th June, 1950, by 10 Partners, under deed, dated 1st July, 1949 with the State Government of Madhya Pradesh was only seasonal and it expired with the efflux of time, namely, on 31st October, 1950. There was another contract with the self-same Partnership for the period 1st November, 1950 to 31st October, 1951. He further contended that the State Government has entered into an agreement for the subsequent period that is from 1st November, 1951 to 31st October, 1952 for procurement with Basna Saraipali Grain Trading Company, as evidenced by a deed, dated 28th of March, 1952, and of this Partnership there were only 4 partners. This partnership of 4 partners, according to the respondent No. 1, is a new partnership and it has nothing to do with respondent No. 1. That agreement of 20th March, 1952, mentions that the new partnership will be treated as having entered into an agreement as from the period beginning from 1st November, 1951. Shri Jaidev contends that even if he is proved to be a member of the Partnership it would not be a disqualification under section 7(d) of the Act. He contends that the Respondent is estopped from urging position to the contrary to the one he had taken at the time of scrutiny of his own nomination paper.

22. The material date with reference to which the qualification or disqualification of the candidate is to be seen is 15th November, 1951. In the case before us the law speaks with a clearer voice, a person must be qualified to be elected as a member at the moment when he offers himself for nomination. If there is a disqualification the Returning Officer cannot accept his nomination on the chance that the disqualification may be removed before the election is completed. On the day of scrutiny the Returning Officer has to see whether nomination paper of a candidate was valid on the date on which it was made. Election includes nomination which is one of the processes necessary to complete and it is reasonable that eligibility for election should be the measure of eligibility for nomination.

23. The admitted facts are that there was an agreement between the State Government of Madhya Pradesh and Basna Saraipali Grain Trading Company dated 28th June, 1950. That agreement does not limit the period for which it was to be in force. It does not mention that it was for one year only much less does the agreement say that it was for the season commencing from first of November, 1949, to 31st October, 1950. On the other hand there in clause 12-A in the agreement mentioning that the agreement was terminable with one month's notice on either side. Of course, there is another clause which permits the State Government through its Director of Food Supplies to terminate agreement in case Basna Saraipali Trading Company is found to be guilty of corruption etc. That there was no other written agreement between 28th June 1950 and 20th March 1952 is clear from Ex. R-3. There is no proof in support of the allegation of the Respondent No. 1 Shri Jaidev that the agreement, dated 28th June, 1950 was for one season and that State Government entered into another contract with the self-same partners for 1st November, 1950 to 31st October, 1951. The position before the Returning Officer on the day of the scrutiny was that there was only one subsisting agreement of 28th June, 1950. There was no mention made before the Returning Officer of this new Partnership of 4 partners born on 20th March, 1952. In this connection it may be necessary to mention that respondent Jaidev sent a letter dated 13th November, 1951, to the Deputy Commissioner, Raipur, mentioning "That as necessary

information in this respect is to be given to the authorities, the undersigned is herewith submitting the same for your information". Shri Jaidev in his evidence states "I did not get any order of Deputy Commissioner on my application, dated 13th November, 1951." Further the respondent's witness No. 3, who was the managing partner of the firm states, "Present partnership with 4 members was constituted on 28th of March, 1952". Regarding old partnership, first to resign on 25th October, 1950 was Shri Jaidev and last to resign was Shri Abdul Hamid who resigned within a week of 28th March, 1952. As a result the business of the firm was carried on from 1st November, 1951 by such partners as had not tendered their resignations. The partners intimated their resignation to the food officer from time to time. They did not intimate their resignation to me".

24. The position, therefore, which clearly arises from the oral and documentary evidence on record is that the new partnership came into existence on 20th March, 1952, and that the old partnership continued to function till that date. It is abundantly clear that the partnership, which was formed on 1st July, 1949 of which respondent No. 1 was a partner and with whom the agreement dated 20th June, 1950 was entered by the State Government, continued to be a contractor for the supply of goods to the State Government of Madhya Pradesh.

25. Shri Nalk, advocate, who appeared for respondent No. 1, contended that the State Government recognized only 4 partners of the new firm with whom an agreement was entered into on 28th of March, 1952, and that agreement mentions that this new partnership of 4 partners was to be responsible as and from 1st November, 1951; it should be hence treated that there was no disqualification against the respondent.

25(a) The history of the new agreement with the remaining 4 partners dated 20th March, 1952, from the documents on record, would show that neither the State Government nor the Deputy Commissioner, Raipur acted on the letter of Respondent No. 1, written by him on 13th November, 1951; it is Ex. D in the case. Up to 20th March, 1952 the State Government did not recognise the new Partnership. It was on 26th March, 1952 that the Deputy Commissioner, Raipur writes to the State Government of Madhya Pradesh that the following 4 partners will now constitute the Agency and seeks approval by a letter, dated 26th March, 1952. The State Government through its Under Secretary Shri Dubey writes under date 16th April, 1952 stating that proposals for reconstituting the agency cannot be accepted and wants a report showing reasons for retirement of other Partners. The Deputy Commissioner, Raipur informs the State Government by a letter dated 15th June, 1952 stating that Respondent No. 1 retired for contesting election and on that the State Government's approval was recorded on 24th June, 1952.

(b) It may be noted that the Election Petition urging disqualification of Respondent No. 1 was filed before the Election Commission on 9th April, 1952.

26. This new partnership of 4 partners which came into existence on 28th March 1952, was not in existence on 15th November, 1951 when the nomination was filed by the respondent No. 1. If really the respondent No. 1 was a partner of a firm which held an office of profit then the disqualification attaches to every member of the firm. The state Government and the respondent No. 1 could not retrospectively remove a disqualification if it existed on 15th November, 1951 by having it mentioned in the agreement dated 28th March, 1952. There is abundant material on record to show that the State Government had not exonerated the partnership which had entered into an agreement of 28th June, 1950 at any time before 24th June, 1952. It may be worthwhile to note that respondent No. 1 Shri Jaidev was declared elected long before 28th March, 1952. Only because a candidate might have freed himself from his disability by procuring the consent of the Government still the disability which existed on 15th November, 1951 cannot be treated as removed as and from 1st November, 1951 only because the subsequent agreement dated 28th March, 1952, mentions that the new firm will be treated as functioning from 1st November, 1951.

27. The matter has to be examined further from this point of view that even though the agreement of 28th June, 1950, may have subsisted in favour of Partnership, still could it be said that respondent No. 1 was a partner of that firm in whose favour the agreement continued to be exist till 28th March, 1952, or at least till 15th November 1951 which would include the days of nomination and scrutiny of nomination paper of Respondent No. 1. This partnership which had taken the contract was formed on 1st July 1949. It was a partnership at will. It



was registered under the Partnership Act, with the Registrar of Firms, Madhya Pradesh. The copy of the certificate of registration filed shows the name of respondent No. 1 as its partner. No change has been brought about by having the name of respondent No. 1 deleted if he really ceased to be its partner. The statement noted in the register of firms shall, therefore, be treated as conclusive proof of the fact that the respondent No. 1 is a partner of that firm as laid down in section 68 of the Indian Partnership Act. This document shows that the respondent No. 1 did not cease to be a partner in such a way that he had no benefit or share or interest in the contract for the supply of goods to the Government of Madhya Pradesh.

27(a). What respondent No. 1 did was that he sent a letter to the Manager, Basna Sarapali Grain Trading Company on 25th October 1951 stating that he does not wish to continue as a partner from 1st November 1951. It may be incidentally mentioned that if the partnership was to be terminated by efflux of time from 1st November 1951 it was not necessary to have such a letter sent. The letter itself assumed that without this letter the partnership was to have continued. The question to be examined would be: is this letter sufficient in the eye of law to terminate the relationship of respondent No. 1 as a partner? The letter purports to be dated 25th October 1951. No doubt partnership in question is one at will; a partner could retire by giving notice, but that notice is required to be given in writing to other partners by the retiring partner of his intention to retire. The letter dated 25th October 1951 was not addressed to all the partners but it was addressed to the Manager and in that the manager was asked to give intimation to other partners. The respondent No. 1 did not himself give notice in writing to all the other partners of his intention to retire. The manager who was Sohanlal, respondent's witness No. 2, on the receipt of the letter dated 25th October 1951 from respondent No. 1 forwards that letter to Shri Maniklal who was the managing partner of the firm. The managing partner, Shri Maniklal, in his turn intimates to Sohanlal to inform the other partners of this fact and Sohanlal is said to have intimated orally to other partners. On the other hand the letter which was filed before the Returning Officer purporting to bear a date dated 29th October 1951 mentions that the letter of respondent No. 1 dated 25th October 1951 was placed before all the partners and that his application dated 25th October 1951 was accepted by all of them and acting on the contents of this letter the Returning Officer accepted the nomination form of respondent No. 1. In this connection respondent No. 1 says "I do not know what proceedings the manager and other partners of the firm took on my letter dated 25th October 1951 to withdraw my resignation from the firm. I do not know if any meeting of the other partners was convened for placing my resignation before them." Thus there is no evidence to show that the intimation of retirement was given in writing to all the other partners about the intention to retire of the respondent No. 1. Ex. P-9 dated 26th October 1951 is the reply of Maniklal the managing partner to the manager Sohanlal. Evidence on record proves that there was no meeting of Partners and no written notice given to all the Partners of the intention to retire from Partnership as and from 1st November 1951.

27(b). A written notice to the manager and through him to the managing Partner of the firm, Shri Maniklal, would not be sufficient notice for all the Partners. There is no doubt authority to every Partner to act for the Partnership and notice to one of the Partners is sufficient notice; but that authority to act is only for carrying on the business of the firm and not for the dissolution of the firm. Therefore, in the absence of any written notice to each of the Partners, there is no compliance with the requirements of section 32(1) (c) of the Indian Partnership Act.

27(c) Besides, the partnership in question being a registered partnership, will be continued to subsist and notwithstanding the retirement of a partner from the firm, the retiring partner as well as the other partners continue to be liable as partner to third party, for any act done by any of them, which would have been an act of the firm if done before the retirement until public notice is given of the retirement. In the present case the work of procurement continued as before from 1st November 1951 onwards for a period which included 15th November 1951 as well. As already stated above there is evidence to show that the old partners continued to deal with the State Government except for those who retired from time to time till the formation of the new partnership. The liability with a third party, namely, with the State Government in this case will, therefore, continue unless a public notice is given of the retirement. Public notice under the Partnership Act is required to be given under section 72 read with section 63 of the Partnership Act; it enjoins a notice to the Registrar of the firm and its publication in the local official gazette and at least in one vernacular newspaper circulated in the district where the firm to which it relates has its place of business. Nothing of the kind to comply to the requirements of the public notice as required was

done in this case. It may be said that this public notice is only to safeguard interest of a third party, and if that third party, in this case the State Government, chooses to waive that notice and exonerate from its liability the Partnership of 10 Partners of which respondent No. 1 was one, that should be sufficient. But the State Government cannot waive the notice in such a way as to remove the disqualification which was earned by respondent No. 1 on 15th November 1951 because of absence of a public notice. The stigma of disqualification cannot be removed by the hand of the State Government, retrospectively when the interest of the general body of electors is to be considered and that too at a time when the Election Commission was seized of the case.

28. Further it was contended that the respondent 1 had withdrawn his capital before 31st October 1951 and had received his share of profit before 15th November 1951. There is withholding of documentary evidence to prove this fact by Respondent No. 1. It was stated that the burden of proof to prove that respondent No. 1 continued as a partner lay on the petitioner. In my view when the execution of the agreement dated 28th June, 1950, which fixed no term of its duration was admitted, the burden would be shifted on to the respondent No. 1. Moreover the best evidence for proving this fact not having been laid in the case from the account books of the firm, I hold that the respondent No. 1 had not received his share of contribution much less of his profits at any time before 18th November 1951. Respondent No. 1 would be enjoying the rights of a Partner under section 37 of the Partnership Act.

29. The firm constituted on 1st July 1949 was not dissolved at any time by act of Parties. The contention of the Respondent that it stood dissolved on 31st October 1951 because of end of season is not correct. Looked at from any point of view respondent No. 1 would continue in the eye of law to be a person who had a share in partnership on 15th November 1951 and that partnership held a contract with the State Government.

30. A case of the parties has to be restricted to the pleadings in the case and no amount of evidence can be looked upon pleas which were not put forward (see 1930 Privy Council, 57). The respondent No. 1 has not alleged that the State of Madhya Pradesh had exonerated the partnership which had entered into an agreement with it on 28th June, 1950, from continuing the agreement after 1st November 1951. The agreement dated 28th June, 1951 lays down as condition No. 14 that there could be no assignment of the agreement in favour of anybody. It will be clear breach of the terms of the agreement if a partner is allowed to retire before the completion of the agreement. Either all partners close the business or they have got to function as partners. That is clearly the scheme of the agreement. The respondent No. 1 in law had not ceased to be a partner, and he could not have done so unless the Partnership itself had given one month's notice contemplated under clause 12(a), to the State Government.

31. It is argued that the petitioner was stopped from taking up a position that the partnership subsisted on 15th November 1951 and of that partnership the respondent No. 1 was a member. The ground of estoppel is said to be that the petitioner himself in support of his nomination form contended that the firm should be treated as dissolved in law. In fact the statement on which the reliance was placed cannot be used as a ground of estoppel because on the basis of that statement the respondent No. 1 was not led to act in a particular way. The nomination form of respondent No. 1 was already accepted as being valid. There is, therefore, no force in the objection that the petitioner cannot challenge the election of respondent No. 1 on the ground urged. The admission of the petitioner was, even as mentioned by him, was the statement of law and that he was doing so on the opinion given by his lawyer. Even that statement was retracted by him before his own nomination form was rejected. There could be no admission on the point of law. Moreover election petitions concern not only the parties but they are matters of public interest as they involve rights of entire constituency. The essential characteristics of election Petitions are that they cannot be brought to an end at the will of parties without giving an opportunity in the prescribed manner to all others, who might have been the petitioners, to continue them if they wished to do so. Election petitions are not ordinary civil suits but they are matters of public importance involving rights of entire constituency. The petitioner in any election petition is not restricted to the ground raised before a Returning Officer at the time of scrutiny, nay an election petition could be filed even though there may be no kind of objection raised at the time of scrutiny. The objection, therefore, that the petitioner is estopped from filing the petition has no force.

32. It is urged that even though the nomination form of respondent No. 1 was improperly accepted the result of the election has not been proved to be materially

affected because no evidence has been led on the side of petitioner. If really the respondent No. 1 could not stand for election because he was disqualified to stand as a candidate and if the Returning Officer should have rejected his nomination form then certainly the result of election would have been in favour of any other candidate, in as much as respondent No. 1 could not be declared as a successful candidate. The result is patently materially affected. No doubt in the case of rejection of a nomination paper there is a presumption that the result is materially affected, but that presumption would also apply where the improper acceptance of nomination paper relates to a candidate who is declared successful. It is only when the improper acceptance of a nomination form is of any person other than the successful candidate then only proof is necessary to be given. Thus the nomination form of respondent No. 1 was improperly accepted and the result of the election has been materially affected. In my view the petition has to be allowed with costs.

*Dated the 23rd December 1952.*

(Sd.) B. R. MANDLEKAR,

Member.

33. The first point for consideration is whether respondent 1 Jaidev was a partner of the firm of Basna Saraipali Grain Trading Company (hereafter called the firm) on 15th November 1951, on which date he filed his nomination paper as a candidate for the State Legislative Assembly. The second point that would next arise is whether he was disqualified to stand as a candidate, because that firm was then working as the procurement agents of the State Government in food grains. This work of procurement agents was done by the firm for the State Government under two agreements dated 20th June 1950 and 21st March 1952, Ex. E and Ex. R-1, respectively.

34. Dealing first with the first point, the evidence of respondent 1 Jaidev and his witness Sohanlal shows that Jaidev had sent the letter Ex. R-9 dated 25th October 1951 to the manager of the firm, Sohanlal, R. W. 2, intimating that the former had resigned as a partner of the firm, and further intimating that the other partners should be intimated of his resignation. Ex. R-5 is the partnership deed executed by all the 10 partners of this firm. This deed clearly shows that it was a partnership at will. By giving this notice, respondent 1 Jaidev had clearly intimated to all the partners of the firm that he had resigned from the firm from 25th October 1951.

35. Maniklal, R. W. 3, is a partner of the firm. In fact, his deposition shows that he is the managing partner of the firm. As such he directed Sohanlal by his own endorsement dated 26th October 1951 on Jaidev's letter of resignation, Ex. R-9, that since Jaidev did not desire to continue as a partner of the firm, his resignation was accepted, and that the other partners should be intimated accordingly. Maniklal personally informed accordingly to Jagdishprasad, one of the partners. Sohanlal, R. W. 2, the manager of the firm, stated that he intimated the other partners of the firm that respondent 1 Jaidev had resigned from the firm. I accept this evidence as reliable for the reasons which I shall briefly summarise.

36. Nothing was elicited in the cross-examinations of these witnesses of respondent 1 to discredit their testimony. In his application and affidavit respectively dated 18th November 1951 and 17th November 1951, Ex. R-3 and R-4, the petitioner himself had admitted that respondent 1 Jaidev had resigned from the firm, and had gone so far as to contend that the firm itself had, therefore, been dissolved with effect from 25th October 1951. The petitioner did not adduce any evidence to show that any of the partners of the firm had not received intimation of respondent 1 Jaidev's resignation. As my learned colleague, Shri G. W. Shiploker, has pointed out, respondent 1 Jaidev had even produced the letter of the manager of the firm intimating his resignation before the Returning Officer.

37. Additionally, the papers produced from the food office of the Deputy Commissioner, Raipur, at the instance of the petitioner himself contain the letter dated 13th November 1951 written by respondent 1 Jaidev to the Deputy Commissioner intimating that he had resigned from the firm. He had evidently done so, because he desired to stand as a candidate for the State Assembly. The Returning Officer himself was also the Deputy Commissioner. It is, therefore, probable that it was on account of his (Returning Officer's) knowledge of respondent 1's resignation that he had accepted Jaidev's nomination paper. For these reasons I concur with the finding of my learned colleague, Shri Shiploker, that respondent 1 Jaidev had ceased to be the partner of the firm with effect from 25th October 1951.

38. I am further of the opinion that as a result of respondent 1 Jaidev's resignation, the firm, as originally constituted with 10 partners, stood legally dissolved under Section 32 and 43 of the Indian Partnership Act with effect from 25th October 1951. I am further of the opinion that respondent 1 Jaidev had thereafter no connection with the firm. He has stated that he did not participate in any business with the State Government after 25th October 1951. I accept this evidence as reliable, because even the petitioner himself, who is challenging respondent 1's election in this case, has not adduced an iota of evidence to show that respondent 1 took any part in the business of the firm with the Government after 25th October 1951. All the partners of the firm themselves elected to accept his resignation. The Deputy Commissioner, as the accredited agent of the State Government, also agreed to absolve respondent 1 from every liability as a partner of the firm from 13th November 1951. Indeed, this inference is further reinforced by the fact that the same office accepted respondent 1's nomination paper in his capacity as a Returning Officer. All the parties concerned in the procurement agreement dated 20th June 1950, Ex. E, had thus absolved respondent 1 Jaidev from the contract of the State Government before 15th November 1951 on which date respondent 1 had filed his nomination paper. I, therefore, hold that respondent 1 Jaidev had no share or interest in the contract for the supply of goods to, or the performance of any services undertaken by, the State Government under the agreement dated 20th June 1950, Ex. E.

39. In fact five other partners of the firm similarly tendered their resignations upto 20th March 1952. All the partners as well as the State Government accepted these successive resignations as well, as they had accepted respondent 1 Jaidev's resignation. The result was that the partners who actually carried on the work of supplying food grains to the State Government from 1st November 1951 were only four in number. The State Government was content to accept the contract for the supply of food grains from those four partners alone. Accordingly the agreement Ex. R-1 dated 21st March 1952, it should be noted, came to be executed by the four remaining partners alone with the State Government with effect from 1st November 1951.

40. The omission of respondent to notify his resignation to the Registrar of Firms, Madhya Pradesh, or to the public in general is of no avail to the petitioner's case. Such an omission may entail some consequences. I am, however, of the opinion that that omission does not entail any disqualification under Sec. 7(d) of the Representation of the People Act.

41. I, therefore, agree with the order proposed by my learned colleague, Shri G. W. Chiplonker.

(Sd.) S. A. PANDE,  
Chairman,  
Election Tribunals.

*Order of the Tribunal*

42. The petition of the petitioner Niranjansingh is, therefore, dismissed. The petitioner shall pay the costs incurred by respondent 1, and bear his own. The counsel's fee shall be Rs. 150/-, considering the nature of the contest involved in the case. The petitioner shall pay the cost of publishing the petition in the State Gazette. Without prejudice to any other mode of execution for costs, the same shall be realisable from the deposit of Rs. 1000/- made by the petitioner at the time of presentation of this petition.

(Sd.) S. A. PANDE,  
Chairman,  
Election Tribunals,  
Rajnandgaon.

*Dated the 23rd December, 1952.*

(Sd.) G. W. CHIPLONKER,  
Member, Election Tribunals,  
Rajnandgaon.

(Sd.) B. R. MANDLEKAR,  
Member, Election Tribunals,  
Rajnandgaon.

**S.R.O 2133**—Whereas the Election of Shri A Nesamony Advocate Nagercoil, as a member of the House of the People from the Nagercoil constituency of that House has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Sivathanu Pillai son of Shri Mathevan Pillai, Ramavaimapuram Ward XIII, Nagercoil, Travancore-Cochin,

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its order on the said Election Petition,

Now therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal

#### BEFORE THE ELECTION TRIBUNAL, TRIVANDRUM

In the matter of the Election to the House of the People from the Parliamentary Constituency of NAGERCOIL, held in January 1952

ELECTION PETITION No. 40 of 1952

26th December, 1952

Present—

Shri G Kumara Pillai, MA, B L

Chairman

Shri A H Bijili BSc B L

Member

Shri R Narayana Pillai, BA B L

Member

Petitioner

Sivathanu Pillai son of Mathevan Pillai,

Ramavaimapuram Ward No XIII, Nagercoil Travancore-Cochin

By Advocate Shri K P Ramachandran Nair

*Versus*

Respondents

1 Nesamony, Advocate, Nagercoil

By Advocate Shri D Gnanasigamony

2 Sam Nathaniel Advocate, Nagercoil

3 P Thanulinga Nadar Advocate Nagercoil

The petition having been finally heard on 20-12-1952 the Tribunal on 26-12-1952 made and announced the following—

#### ORDER

1 This petition is filed by Shri Sivathanu Pillai son of Mathevan Pillai, one of the unsuccessful candidates at the election held in January 1952 to the House of the People from the Parliamentary constituency of Nagercoil, for declaring the election of the returned candidate the 1st respondent, Shri A Nesamony void. Respondents 2 and 3 are the other unsuccessful candidates at the said election. The petitioner impeaches the election on grounds of irregularities in procedure fraud, corrupt and illegal practices, false incorrect and incomplete return of election expenses, etc., set forth in paragraphs 2, 3 and 7 to 12 of the petition and lists A to D attached thereto. The 1st Respondent denies the charges. In his objection petition he answered the charges seriatim and also contended that the allegations in the election petition were vague, frivolous and vexatious, and lacking in bona-fides and that the petition did not contain the particulars required by law and should therefore be struck off as untenable. He also filed a separate petition for striking off the election petition in limine as it discloses no ground for setting aside the election and does not contain the particulars required by law.

2 After hearing both sides at great length we struck out on 4th October, 1952, such allegations in the election petition as we considered could not be enquired into and framed the following issues on the remaining allegations

#### ISSUES

(1) Whether the acceptance of the nomination of respondents 1 and 3 was improper for the reasons alleged in paragraph 7 of the Election Petition?

Whether the result of the election was materially affected by their improper acceptance?

(ii) Whether the 1st respondent made a speech at a public meeting near the Monday Market, Neyyoor, on 31st December 1951, stating that the petitioner had misappropriated properties of considerable value belonging to the Sambavar community in the Thovala Taluk? Whether he repeated these allegations at another

public meeting on the same day at Mulakummoodu near Thuckala? Whether these acts would constitute corrupt practice as defined in Clause 5 of Section 123 of the Representation of the People Act?

(iii) (a) Whether the persons mentioned in Clause 1 of List B of the Election Petition were the agents of the 1st Respondent, and whether they created a violent disturbance at the public meeting held at Karungal on the 12th November 1951, as alleged therein? Whether the said persons created a violent disturbance at the public meeting at Velliavilai on 10th December, 1951, as alleged in Clause 2 of List B?

(b) Whether Fr. Hillari, Manager of the Carmel School, Nagercoil, was an agent of the 1st Respondent and exercised undue influence over the parents of his pupils to vote for the 1st Respondent and conducted fraudulent propaganda that the Bishop had ordered them to vote on risk of spiritual displeasure?

(c) Whether the Catholic Bishop of Kottar had issued written instructions to his Congregation prohibiting them from voting for Socialists and Communists and to the effect that they would be committing a sin if they voted in favour of candidates supported by these parties? Whether these instructions were read out to the congregation on the Sunday previous to the election? Whether the result of the election was materially affected thereby?

(d) Whether Dr. Mathias and S. Kumaraswami of the Pioneer Company, Nagercoil, exercised undue influence over their employees to vote for the 1st Respondent on peril of their jobs? Whether Dr. Mathias and Kumaraswami gave one day's wages for their employees to vote for the 1st Respondent?

(e) Whether the 1st Respondent has exercised undue influence over the lessees of the Church of South India M's on and caused them to vote for him by threatening to deprive them of their leaseholds if they did not vote for him? Did he create a general impression among them that he had discovered a way to find out if they did not vote for him?

(f) Whether the 1st respondent has caused Dr. Mathias to purchase votes for him from the villages of Ganeshapuram, Payode and Chemponvilai? Whether he has caused Dr. Mathias to pay a day's wages to the latter's estate employees to vote for him?

(g) Whether Sahul Hammed and his son paid money as agents of the 1st Respondent to the voters at Akianicherry, and Chungankadacherry on 1st January, 1952 to vote for him?

(h) Whether A. M. Simon paid money to the voters at Colachel and through his Father-in-law to the voters at Kadiyapattanam and Manakudi on 1st January, 1952 to vote for the 1st respondent? Whether he did so at the instance of the 1st respondent?

(i) Whether the 1st respondent caused Dr. Mathias to lend money to D. Thomas and A.M. Simon for obtaining their support to his candidature?

(j) Whether the motor vehicles mentioned in Clause 8 of List D were hired or procured on payment or otherwise by the 1st respondent and his agent and other persons with his connivance for the conveyance of electors to and from the places mentioned therein?

(iv) Whether the instances covered by Issues 3, 4 and 5 will amount to corrupt practices vitiating the 1st respondent's election?

(v) Whether the 1st respondent's return of election expenses is false, incorrect and incomplete? Whether the return is invalid for any of the reasons stated in Clauses (a), (b) and (c) of paragraph 12 of the election petition?

(vi) Whether the 1st respondent's election is liable to be declared void for any or any of the reasons covered by Issues 1 to 5?

(vii) What is the order as to costs?

3. The reasons for striking out the allegations not covered by the above issues are stated in our order dated the 13th October, 1952, annexed to this order.

4. After framing the issues on 4th October, 1952, we posted the election petition to 13th October, 1952, for examination of the petitioner. But the petitioner did not appear on 13th October 1952, and a petition signed by him was filed by his Advocate on that date, stating that he (petitioner) was not well and was not in a position to appear before the Tribunal on that day and that he had moved the Election Commission to transfer the trial to some other Tribunal as he had reasons to believe from the nature of issues raised and other circumstances that he would not get a fair trial. Thereupon we adjourn the trial to 22nd October 1952 and ordered that the case would be proceeded with on 22nd October 1952 if the petitioner did not obtain from the Election Commission orders by that date staying or transferring the proceedings. We also directed on 13th October 1952, that if

the petitioner did not obtain such orders by 22nd October 1952 he must produce his documents and lists of witnesses and would also be examined on 22nd October, 1952. The petitioner did not appear on 22nd October 1952. No order was also obtained from the Election Commission staying or transferring the proceedings. Nor did the petitioner produce his documents and list of witnesses on that date. But an application was made on his behalf on 22nd October 1952, for time to move the High Court under Articles 226, 227 and 238 of the Constitution of India to quash the order striking out the allegations not covered by the issues raised for trial. Although the 1st Respondent strongly opposed this application we adjourned the trial to 25th October 1952, with the direction that the petitioner must appear and examine himself or adduce other evidence on that day and that the case would be proceeded with if he defaulted to do so. This order was not complied with by the petitioner. On 25th October 1952 his Advocate filed a petition stating that a writ Petition, O.P. 95 of 1952, had been filed in the High Court of Travancore-Cochin for quashing the order striking out the allegations and praying that the trial should be held up till the disposal of the above O.P. or adjourned for at least a month. We then adjourn the trial to 8th November, 1952. On the petitioner's application the trial was again adjourned from 8th November 1952 to 15th November 1952. Neither party appeared, and no witness was present, on 15th November 1952. The Advocates also did not appear on that date; and there was also no application for adjournment by any party. So we adjourned the Election Petition to 22nd November, 1952, for hearing. On 22nd November 1952, also the petitioner and his Counsel did not appear, and we adjourned the case to 29th November 1952 for hearing. Even on 29th November, 1952 the petitioner and his Counsel did not appear. We, however, adjourned the case once again 20th December, 1952. The High Court dismissed the Writ Petition, O.P. 95 of 1952, on 11th December 1952. But the petitioner and his Counsel neither appeared nor applied for time on 20th December 1952 also.

5. In the light of the repeated defaults of the petitioner and his Counsel we considered that no useful purpose would be served by further adjourning the hearing. We therefore heard on 20th December 1952, the 1st respondent's Advocate who had been pressing all along for the disposal of the petitioner and submitting that the petitioner was only trying to protract the proceedings and harass the 1st respondent, and posted the case to this date for disposal. The petitioner has not cared to examine himself and his witnesses in spite of ample time given to him for that purpose. He has not even filed a list of witnesses; and he has also not been appearing on any of the posting dates after 4th October 1952. From 8th November, 1952, his Counsel also has not been appearing.

6. The burden of proof as regards all the issues is on the petitioner. Since he has not adduced any evidence we hold that the petitioner has not made out any ground for declaring the election of the 1st respondent void. We further find that no corrupt or illegal practice has been proved to have been committed by, or with the connivance of any of, the respondents or their agents. It has not also been proved that the 1st respondent's return of election expenses is false, incorrect or incomplete, or invalid for any of the reasons stated in paragraph 12 of the election petition. Since the petition fails the petitioner must pay the costs of the 1st respondent and bear his own costs. We assess the 1st respondent's costs, inclusive of Advocate's fees, as Rupees. Three hundred (Rs. 300/-).

7. In the result, we dismiss the election petition with costs to the 1st respondent as aforesaid.

(Sd.) G. KUMARA PILLAI, *Chairman.*

(Sd.) A. H. BIJILI, *Member.*

(Sd.) R. NARAYANA PILLAI, *Member.*

#### ANNEXURE

Order dated 13th October, 1952 (Appended).

PROCEEDINGS OF THE ELECTION TRIBUNAL, TRIVANDRUM ON ELECTION PETITION  
No. 40/1952.

#### ORDER

1. One of the unsuccessful candidates at the election held in January 1952, to the House of the People from the Parliamentary Constituency of NAGERCOIL, Shri

Sivathanu Pillai son of Mathevan Pillai, has filed this petition for declaring the election of the returned candidate the 1st Respondent, Sri A. Nesamony, to be void. He impeaches the election on several grounds set forth in paragraphs 2, 3 and 7 to 12 of the petition and lists A to D attached thereto. The 1st Respondent contends that all these grounds are only vague and general charges which do not deserve consideration and cannot be enquired into. Along with the objection petition in which he has answered the charges serially and stated that the petition is vague, frivolous and vexatious and lacking in bonafides and does not contain the particulars required by law and ought to be struck off as untenable, he has also filed another petition praying that the Election Petition might be struck off in limine as it discloses no ground for setting aside the election and does not contain the particulars of the alleged corrupt practices as required by law. We therefore heard both the 1st Respondent and the petitioner's Counsel on the preliminary question as to whether the election petition in its entirety, or any part of it, should be struck off, and as to what issues have to be framed and set down for trial if the petition cannot be struck off in its entirety. After we heard the parties at length for two days, the petitioner filed three petitions on 4th October, 1952, one for amending the Election Petition, another asking us to order him to furnish further particulars if we deem them necessary and stating that he will be demitted if the allegations are struck off on the ground of want of particulars and that he is ready and willing to furnish the further particulars within a reasonable time if the Tribunal is of opinion that such particulars are required, and the third for accepting the pamphlets and other printed papers referred to in the lists. After hearing the petitioner and the 1st Respondent on these petitions also we come to the conclusion that the Election Petition could not be struck off in its entirety and that issues had to be raised and set down for trial in regard to some of the allegations and charges contained therein. We also came to the conclusion that even after taking into consideration the three petitions filed by the petitioner on 4th October, 1952, no issue could be raised on the other allegation and charges made in the Election Petition, and that those allegations and charges should be struck off. We accordingly framed seven issues for trial on 4th October 1952, and struck off the allegations and charges in the Election Petition not covered by those issues. We are now giving the reasons for our decision to strike off the allegations.

2 Clause 1 of Section 83 of the Representation of the People Act provides that an Election Petition shall contain a concise statement of the material facts on which the petitioner relies, and Clause 2 provides that the petition shall be accompanied by a list setting forth full particulars of any corrupt or illegal practices which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each practice. Both the petition and the list have to be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure for the verification of pleadings. Power is given to the Tribunal by Clause 3 of Section 83 to allow the particulars included in the list to be amended or to order further and better particulars to be furnished upon such terms as to costs and otherwise as it may direct. There is no other provision in the Representation of the People Act conferring on the Tribunal the power of allowing amendments. From the Act it, therefore, appears that the Tribunal can allow only the particulars in the list to be amended and has no power to allow an amendment of the petition itself. The uniform practice also of Election Tribunals in India appears to have been to refuse amendments of Election Petitions and to allow only the particulars in the list to be amended. In the case of KANGRA CUM GURDASPUR (M.R.) 1924 reported in HAMMOND'S ELECTION CASES—India and Burma, 1936 Edition, page 435, which was governed by Election Rules similar to Clauses 1, 2 and 3 of Section 83 of the Representation of the People Act, the Commissioners observed at page 440:—"What we have to see is whether we can allow the petitioner to amend his petition and list of particulars at this stage or not. We consider that Rule 33(3) gives us power to call for further and better particulars if we so desire. This power, however, refers only to the particulars, and not to the petition. The present Rule 33(1), (2) and (3) is different from the old Rule 31." Exactly the same view was adopted by the Commissioners who decided the case of AMRITSAR CITY (M) 1924 reported in HAMMOND'S ELECTION CASES Page 83. Commissioners in that case further pointed out that there is difference between English and Indian Law in this matter. The contention that the Election Tribunal can allow the petition to be amended since the petition has to be tried, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits, has also not been countenanced in other cases. In the case of KANGRA CUM GURDASPUR mentioned above as well as in the case of SAHARANPUR (N.—M.R.) 1920 reported in HAMMOND'S ELECTION CASES page 621 this contention was over-ruled on the ground that the



direction to enquire into the petition in accordance with the procedure applicable under the Code of Civil Procedure to the trial of suits referred only to the conduct of the enquiry and not to the petition itself. The amendments which the petitioner in the present case wants to make are nine in number. The most important of them are what are referred to as amendments 5, 6, and 7 in the Amendment Petition. In paragraph 7 of the Election Petition the petitioner impeached the acceptance of the nominations of Respondents 1 and 3 on the ground that, "There was no declaration by them of their election agents as per Rules." The 1st Respondent contends that as the Election Petition stands at present it will be open to the petitioner to show only that there was no declaration by Respondents 1 and 3 of their election agents as per the rules framed under the provisions of the Representation Act, and that if the amendment is allowed it will be open to him to show that there was no declaration both as per the rules and as per some of the Sections of the Act. The petitioner urges that even as the petition stands at present it will be open to him to show that there was no declaration as per the Section also of the Act, and that the petition does not limit his objections to the violation of the rules alone. If that is so, he need not have asked for the amendment at all. We do not think it proper to express any opinion at this stage as to what the petitioner may or may not prove on the strength of the allegation made in paragraph 7 of the Election Petition. But we have no doubt that the amendment sought to be made in this paragraph is an amendment of the petition itself. It is not an amendment of the particulars to be stated in the list accompanying the petition. As regards the nature of the amendments that can be made to the particulars in the list we adopt entirely the opinion of the Commissioners in AMRITSAR CITY (M) 1924, who say, "According to Clause (2) of this rule, the petitioner is required to give full particulars of the alleged corrupt practices in this list. Clause (3) of the rule defines the scope of the amendment of this list, which can be permitted. Clause (3) lays down that the Commissioners may allow the particulars included in the said list to be amended or order such further and better particular in regard to any matter referred to therein to be furnished as may in their opinion be necessary for the purposes of ensuring a fair and effectual trial. Now, as already stated above, petitioner has referred to only one instance of personation in paragraph (1) of the list, and by the proposed amendment he seeks to introduce several other instances into the list. We consider that this clearly goes beyond the scope of Clause (3) of rule 33. Petitioner can be allowed or required to give further details with regard to the instance referred to in the original list, but we do not think it is open to him to introduce fresh instances. It would be, in our opinion, straining the language of the rule to hold that the word "particulars" includes fresh instances of a similar kind". In this view we felt unable to allow the amendment sought for to paragraph 7 of the Election Petition. In paragraph 8 of the Election Petition the petitioner impeached the election on account of corrupt practices, and in paragraph 12(c) he impeached the 1st Respondent's return of Election Expenses on the ground that he had omitted to include certain amounts intending to suppress his corrupt practices. By amendments 6 and 7 the petitioner wants to extend the grounds of impeachment in these paragraphs to illegal practices also. With this object he wants to add the words "and illegal" between the words "corrupt" and "practices" in paragraphs 8 and 12(c). This is also an amendment of the Election Petition and not of the particulars, and cannot therefore be allowed. These three amendments are not clerical or inadvertent mistakes as the petitioner says in his affidavit.

3. By amendments 2 to 4 in the Amendment Petition the petitioner wants paragraph 3(r), (s) and (t) to be re-numbered as paragraphs 4, 5 and 6. In the Election Petition paragraphs 4, 5 and 6 are missing, and paragraph 7 follows paragraph 3(t). It is therefore possible that the three paragraphs which ought to be numbered 4, 5 and 6 were wrongly numbered as 3(r), (s) and (t) in the Election Petition by a clerical mistake. No substantial prejudice will be caused to the Respondents by these amendments being allowed, nor will their disallowance cause any prejudice to the petitioner. But much confusion is likely to be caused if the paragraphs are re-numbered at this stage. In paragraph 3(r) of the Election Petition the petitioner impeached the declaration of the 1st Respondent's election on the ground that there was no verification as per Rules 49 and 59. By amendment 1 in the Amendment Petition the petitioner wants to substitute Rule 50 for Rule 59. This is not a case of supplying further and better particulars but an attempt to include an altogether fresh particular or a new ground of objection to the election. The amendment is not therefore one that can be allowed under Section 83(3).

4. By amendments 8 and 9 of the Amendment Petition the petitioner wants to substitute the word 'constitution' for the word 'construction' in List C and the words 'at Colachel' after the words 'brother's house' in Clause V of List D. Amendment 8 has been necessitated purely on account of a clerical mistake and is not

objected to by the 1st Respondent. Amendment 9 is a case of furnishing further and better particulars. These two amendments alone have, therefore, been allowed.

5. The prayer in the Election Petition is for a declaration that the election of the 1st Respondent, the returned candidate, is void. The grounds on which the election of a returned candidate can be declared to be void, are thus given in Section 100(2) of the Representation of the people Act:—"Subject to the provisions of Sub-section (3), if the Tribunal is of opinion—

- (a) that the election of a returned candidate has been procured or induced, or the result of the election has been materially affected, by any corrupt or illegal practice; or
- (b) that any corrupt practice specified in section 123 has been committed by a returned candidate or his agent or by any other person with the connivance of a returned candidate or his agent; or
- (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote which is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election, or by any mistake in the use of any prescribed form,

the Tribunal shall declare the election of the returned candidate to be void." According to the 1st Respondent, the allegations made in the election petition do not disclose the existence of the grounds mentioned in Sub-Clauses (a) and (c) of Section 100(2) in this case, and the lists accompanying the petition in regard to the grounds under Section 100(2)(b) contain only vague and general charges which cannot be enquired into as they do not satisfy the requirements of Section 83(2). On account of this contention it is necessary to examine the allegations in the election petition and see whether those allegations, if proved, would constitute sufficient grounds for allowing the prayer claimed in the petition and whether they satisfy the requirements of Section 83(2) and can be enquired into.

6. Paragraph 2 of the Election Petition which says that "The procedure followed by the authorities concerned in the nomination and scrutiny proceedings, in polling, in counting, and declaration of results, disposal of ballot papers and other documents, ballot boxes were illegal and opposed to provisions of law." is only a preliminary and general statement. The charges therein are vague, indefinite and general. No particulars are given in that paragraph, and the petition appears to have been drawn up with the intention that paragraph 2 should contain a general and all comprehensive statement and that the particulars should be furnished in subsequent paragraphs and lists. No issues is therefore called for in regard to paragraph 2.

7. In paragraph 3 the petitioner states that he has reasonable grounds to believe that there was fraud in the Election, that there was tampering of ballot boxes, and that there was fraud in counting. Clauses (a) to (f) of paragraph 3 purport to contain particulars of this fraud and the tampering of the ballot boxes. The 1st Respondent contends that fraud is not one of the grounds mentioned in Section 100(2) and that his election cannot therefore be declared void even if there is fraud as alleged in the petition. The petitioner's learned Advocate urges on the other hand that Section 100 is not exhaustive and that fraud by itself would vitiate the Election without reference to Section 100(2). In support of this contention he relies upon certain English decisions in regard to fraudulent devices referred to in ROGERS on ELECTIONS Vol. II page 339. But English decisions are not of any help in this case, for as pointed out in "LYALLPUR AND JHANG GENERAL CONSTITUENCY CASE No. 2" reported in DOABIA'S "INDIAN ELECTION CASES" Vol. II page 243, the English Act specifically provides for fraudulent devices. Election Tribunals in India constituted under the Representation of the People Act can exercise only the powers conferred on them by that Statute, and no provision of law has been brought to our notice conferring on them larger powers. Nor has any provision of law other than Section 100 of the Representation of the People Act been brought to our notice regarding the grounds on which an election can be set aside. We therefore consider that Section 100 must be exhaustive; and since such an important thing as fraud could not have escaped the notice of the Legislature when it provided for the grounds on which an election could be set aside, it appears to us that it is because all acts of fraud in connection with an election would fall within one or other of the sub-clauses in Section 100(1) which lays down the grounds on which an election can be declared to be wholly void, and would also fall within one or other of the sub-clauses of Section 100(2) which

lays down the grounds on which the election of the returned candidate can be held to be void, that fraud has not been separately provided for in Section 100. On a similar contention advanced in the "LYALLPUR AND JHANG GENERAL CONSTITUENCY CASE No. 2" referred to above, the Commissioners who heard that case observed:—"The next contention is that as fraud is not a corrupt practice within the meaning of Government of India (Provincial Legislative Assemblies) Order, 1936, paragraph 4-B of the Petition should be struck off. This contention is, in our opinion, quite untenable as fraud may in some cases come within the ambit of the corrupt practice of undue influence. It is, no doubt, true that 'fraud' is not specifically mentioned as one of the corrupt practices in Schedule I to the Government of India Order, 1936, but we are clearly of the opinion that the fraud which has been alleged in the present petition, does fall within the purview of the corrupt practice of "Undue Influence" as defined in Schedule I. Electoral Right has been defined in Part III of the said Order, as the right of a person to stand or not to stand as, or to withdraw, from being, a candidate, or to vote or refrain from voting at an election. "Undue Influence" is described as any direct or indirect interference or attempt to interfere on the part of a candidate or his agent, or of any other person with the connivance of the candidate or his agent, with the free exercise of an electoral right. It is obvious that the definition of undue influence is very widely worded and covers all kinds of fraudulent acts of commissions which in any way directly or indirectly interfere with the exercise of any electoral right. The definition in the English Act specifically makes a fraudulent device or contrivance a type of undue influence. As devices based on fraud which interfere with the exercise of electoral right, are not mentioned by name in the definition given in Schedule I, it has been intentionally framed in very general terms so as to cover all kinds of such devices. [Vide: AGRA CITY CASE (N.M.U.) 1928, HAMMOND'S ELECTION CASES, page 9.] In the present case the petitioner clearly alleges in paragraph 4(b) of his petition and the lists attached thereto that the Respondent "played a fraud" upon him and the Returning Officer and thus induced him to withdraw his candidature. There cannot therefore be the least doubt that the corrupt practice alleged by the petitioner in paragraph 4(b) of the petition, does fall under the category of "undue influence" as understood in the Election Law. We hold, therefore, that so far as the particulars in List B relate to the exercise of undue influence in the form of coercion or intimidation on the petitioner to obtain the letter of withdrawal from him, they shall be deemed to have been struck off and no issue will be framed about the alleged exercise of coercion or intimidation in obtaining the letter of withdrawal." There can therefore be no doubt that the election of a returned candidate can be declared void on the ground of fraud, but to set aside the election on that ground the act impeached as fraudulent must only fall within one or other of sub-clauses of Section 100(2) but also satisfy the other requirements of the particular sub-clause under which it falls. For example, if the fraudulent act or device is undue influence, it would be corrupt practice specified in Section 123 and would fall under Section 100(2)(b). But in that case there must be a further allegation that it was committed by the returned candidate or his agent or by any other person with the connivance of the returned candidate or his agent. Similarly in a case of fraud falling under Section 100(2)(a) there must be a further allegation that the election of the returned candidate has been procured or induced or the result of the election has been materially affected by the corrupt or illegal practice which constitutes the act of fraud. In a case of fraud falling under Section 100(2)(c) there must be a further allegation that the result of the election has been materially affected by the act impeached as fraudulent. It is only allegations satisfying these requirements that need be enquired into, for no useful purpose will be served by enquiring into allegations which, even when proved to be true, would be insufficient for setting aside the election. There is no averment in paragraph 3 that the election of the returned candidate was procured or induced by the fraud or the tampering of the ballot boxes mentioned therein or that those acts were committed by the returned candidate or his agent or by any other person with his connivance or that of his agent or that the result of the election has been materially affected by those acts. Paragraph 3 contains only general allegations, and the particulars are mentioned in Clauses (a) to (t). The instances mentioned in clauses (a) to (t) are mainly non-compliance by the Returning Officer with the rules and orders made under the Representation of the People Act in regard to the transportation of the ballot boxes, the sorting and counting of the ballot papers, the verification of the identity of the boxes, and the appointment of the Polling Agents. It is nowhere stated in the petition that the Returning Officer omitted to comply with the rules and orders with the fraudulent intention of helping the 1st Respondent and making it appear that he had got more votes than he had really obtained. These allegations, therefore, amount only to mere non-compliance of the rules and orders under the Act and the election of the 1st Respondent cannot be set aside even if

they are found to be true without a further allegation that the result of the election has been materially affected by the non-compliance of the rules and orders. There is no allegation and no case in the petition that the result of the election has been materially affected thereby. It was urged at the time of hearing that the acts complained of in clauses (a) to (t) can also be viewed as undue influence practiced by the Returning Officer. Undoubtedly they can be so viewed. Undue influence practiced by a candidate or his agent or by any other person with the connivance of the candidate or his agent is a corrupt practice falling under Section 123, and if it is practiced by a person who is not a candidate or his agent or a person acting with the connivance of the candidate or his agent, it will be a minor corrupt practice falling under Section 124(1). In view of clauses (a) and (b) of Section 100(2) the election of the returned candidate can be declared void on account of corrupt practices only if it has been procured or induced, or the result of the election has been materially affected, by the corrupt practices complained of, or a corrupt practice specified in Section 123 has been committed by the returned candidate or his agent or by the Returning Officer with the connivance of the returned candidate or his agent. There is no allegation in the petition that the acts complained of in clauses (a) to (t) were committed by the 1st Respondent or his agent or with the connivance of either of them or that the 1st Respondent's election has been procured or induced by those acts. Nor is there any allegation that the result of the election has been materially affected by these acts. From the allegations in clauses (i), (j) and (l), it would appear that the 1st Respondent has been credited with some more votes than what he has really obtained. According to the official return, the 1st Respondent secured 15,893 votes and the petitioner 43,778 votes. Respondents 2 and 3 secured 32,075 votes and 36,158 votes respectively. According to clause (a), some Assembly Ballot Papers were wrongly included in the counting and were counted for the 1st Respondent. Only one instance of 200 papers is mentioned in clause (l). Instances of counting twice the ballot papers in a few boxes are given in clauses (j) and (l). Even in these clauses there is no allegation that the wrong counting was due to the 1st Respondent or his agent or was done with the connivance of either of them or that the result of the election has been materially affected, or the 1st Respondent's election has been procured or induced by the wrong counting. In these circumstances, even if all the allegations made in paragraph 3 (a) to (t) turn out to be true, it will not be possible to declare the 1st Respondent's election void. There is no case in the petition that the further conditions for declaring his election to be void, exist. We therefore considered it unnecessary to frame any issue on the allegations contained in paragraph 3 (a) to (t) and struck out the whole of that paragraph including clauses (a) to (t).

8. In paragraph 8 of the Election Petition the election is impeached by reasons of the corrupt practices committed by the 1st Respondent and set forth in List A. The list purports to give 5 instances of publications made by the 1st Respondent and others with his connivance containing false statements regarding the personal conduct and character of the petitioner and prejudicially affecting his election prospects. Two objections are urged by the 1st Respondent to this list. One is that the particulars given in it do not satisfy the requirements of Section 83(2), and the other is that the publications were not in relation to the personal character or conduct of the petitioner or in relation to his candidature, but are mere expressions of opinions about his public conduct based on reliable information believed to be true. The offending publications were not produced along with the Election Petition, but the petitioner produced them on 4th October, 1952. One of the two petitions filed on that day was to receive these publications. Discussing the question whether the petitioner can be permitted to produce subsequently the printed publications which he had not produced with the Election Petition for furnishing the particulars of the corrupt practices, it was observed in the 'NORTH WEST PUNJAB SIKH CONSTITUENCY CASE' reported in DOABIA'S INDIAN ELECTION CASES Vol. II, page 55, at page 32—"So far as we are concerned, it is our duty to try the petition and our powers to allow amendment or amplification of the petition are clearly laid down in Rule 9 of the Charter cited above. We may direct that further particulars be added, in order to ensure a fair and effectual trial of the petition, and in the present case we consider that we shall be acting rightly in the exercise of the discretion vested in us, if we allow the petitioner to add to the List B/I, the very words complained of, where those words appeared

in a registered newspaper, of which under the law a copy of each issue is sent to the Local Government for record, provided that such portion is clearly specified in the list by stating the date and page of the newspaper in which it appears, the heading of the article, etc. By adding of such particulars in the cases mentioned above, an effectual trial of this part of the petition will be ensured, and there will be, in view of the impossibility of fabricating past issues of a registered newspaper, no danger of unfair advantage or disadvantage to either side. We, however, do not consider that permission can be given to the petitioner now to cite particulars of the contents of posters or pamphlets, for the reason that such documents can be easily fabricated after the petition, to be used as evidence in support of allegations made in the petition.—*vide* remarks of the Commissioners in the PUNJAB EAST (SIKH) 1935 CASE, published at page 551 of HAMMOND'S "INDIAN ELECTION CASES" 1936. Also, we consider that where the exact article or note or poem appearing in a newspaper is not specified in the List B/I, but a vague description of the portions alleged to contain false statements is given, there the petitioners cannot be permitted to add particulars as it would be tantamount to granting them permission to fish out fresh instances of "false statements", which we have no authority to allow to be added to the petition or its supporting list." Paragraph 1 of List A refers to the publication of a hand-bill dated 3rd December 1951 entitled an appeal to the independent voters published by B. Pichakkannu Pillai. The very words complained of are not given in paragraph 1, and from the summary given therein it would appear that the statements in the pamphlet related to the public conduct of the petitioner. To judge the nature of the offending statement and whether it was reasonably calculated to prejudice the prospects of a candidate at the Election it is necessary to read the statement in its context. Dis-jointed sentences picked out here and there and read apart from the context are sometimes likely to convey a meaning quite contrary to, or at least not the same as, the meaning they would convey when read in their proper context. The petitioner's Counsel contends that as he had produced the pamphlet on 4-10-1952 it is open to us to look into it and read the statement in the proper context, and that, if we think that the words in the pamphlet are *prima facie* offensive we should frame necessary issues as regards paragraph 1. But the pamphlet in question is not a registered newspaper, and there is no case that it was re-produced in any of the registered newspapers. Having regard to the danger pointed out in the NORTH WEST PUNJAB SIKH CONSTITUENCY CASE referred to above, and the nature of the particulars furnished in paragraph 1 of List A we do not consider it proper to receive the pamphlet, which was not produced along with the Election Petition itself, in lieu of the full particulars which the petitioner was bound to give in the list under Section 83(2). Since the offending statements are said to have been published in a pamphlet we hold that the petitioner cannot be allowed to amend that paragraph or cite fresh particulars in regard to it. Paragraphs 3 and 5 of List A relate to the publication of two pamphlets entitled 'A Rare Opportunity to the Travancore Tamil Voters' and 'Fill up the Cart Symbol Boxes'. These pamphlets also were not produced along with the Election Petition. The names of the presses in which they were printed are given in paragraphs 3 and 5 but the place or places where they were published, i.e., actually put into circulation, are nowhere stated in the petition. Excepting the vague statement that the publishers of the first pamphlet were the 1st Respondent's close associates from Azhagappapuram and other places, the names of the publishers of that pamphlet are not disclosed in the Election Petition or the list. So far as the 2nd pamphlet is concerned, it is admitted in paragraph 5 that it was the 3rd Respondent and not the 1st Respondent who got it printed and published. The very words complained of are not given in both these instances also, and from the summary of the pamphlets given in paragraphs 3 and 5 it would appear that the offending statements in both pamphlets relate only to the petitioner's public conduct and not to his personal conduct or character. For citing full particulars the petitioner has produced the copies of these pamphlets also on 4th October 1952. But for reasons already stated in connection with the pamphlet referred to in paragraph 1 of List A, we hold that it is not proper to receive these pamphlets also in lieu of full particulars to be furnished and that the petitioner cannot be allowed to amend paragraphs 3 and 5 or cite fresh particulars in regard to the offending publications. Paragraph 2 of List A refers to the publication of another hand-bill entitled 'THE POLITICAL CHICANERY OF Mr. B. S. VATHANU PILLAI' on the 10th December 1951. Full particulars of that statement also were not given in the list as required by section 83(2). But it was stated in paragraph 2 that this pamphlet was republished in the weekly newspaper "THINGAL" on the 17th December 1951. On 4th October 1952 the petitioner produced a copy of the "THINGAL" of 17th December 1951 for citing full particulars of the offending publication. In view of the fact that the pamphlet was republished in the newspaper, we hold that the petitioner can be allowed to produce the newspaper for citing the full particulars and that paragraph 2 of List A should be read along with that newspaper. But after reading paragraph

2 and also perusing the publication in the newspaper, we are clearly of opinion that the statements in the pamphlet relate only to the petitioner's public conduct and not to his personal character or conduct. For the reasons stated above, no issues are called for in regard to paragraphs 1 to 3 and 5 of List A. These paragraphs are therefore struck out.

9. Paragraph 9 of the Election Petition questions the 1st Respondent's election on the ground of undue influence and intimidation practised by him and his agents and others with his connivance, and List B furnishes the particulars of the said corrupt practices. In paragraphs 1 and 2 of List B, certain instances of violence alleged to have been committed by the 1st Respondent's agents and others are mentioned. In all instances where full particulars have been given we have framed the necessary issues. In our opinion the allegations in paragraph 2 reading:—"The agents at the connivance of the 1st Respondent made it impossible for rival candidates or their agents to go about freely without fear of violence for purposes of canvassing particularly in and near the following places, as Karingsal, Madathattuvilai, Moolachil, Kotticode, Eathenvilay, Koduppakuzhi, Alanvilai, Kandenvilai, Palappallam, Kodukkavilay, Lekshmipuram, Kodyoor, Kannanoor Poovancode, Kolvel, Nattalam, Kadamancode, and Malicode where the agents freely intimidated the rival parties. At Kotticode and Moolachil there were frequent cases of intimidation followed by violence on the part of the agents of the 1st Respondent on 26th and 29th December 1951, respectively. At Thuckalay his partisans committed violence on persons and threw stones at dead of night on the day of the announcement of the result of the election on 9th January, 1952 at the residence of Mr. Neelakanta Pillai, Vakil, Thuckalay", and the allegations in paragraph 6 of List B are vague and indefinite and entirely lacking in particulars. In the case of LUDHIANA MUSLIM RURAL CONSTITUENCY (DOBIA'S INDIAN ELECTION CASES Vol. II page 257) it was held that the words like agents, supporters and persons working in his interest are vague and that their names should be supplied in the list of particulars. It was also held in that case that the dates of the offence should also be mentioned in the list and that their names should be supplied in the list of particulars, which are so vague and indefinite as not to merit an enquiry, should be struck off. The allegation in paragraph 7 that publication was made in pamphlets and in a newspaper to the effect that the Bishop of Kottar had blessed the 1st Respondent's candidature and that a belief was thereby successfully induced in the Catholic Community that they should vote for him in accordance with the Bishop's blessing will not amount to undue influence or intimidation or corrupt practice falling under Section 123(5). We are fortified in this view by the observation made in the Case of BELLARI MOHAMMEDAN RURAL CONSTITUENCY (DOBIA'S INDIAN ELECTION CASES Vol. I page 169) and the case of NORTH WEST GURGOAN MOHAMMEDAN CONSTITUENCY reported in DOBIA'S INDIAN ELECTION CASES Vol. II page 362. It was observed in the BELLARI CASE that if a Pir supports a candidate he is entitled to take full advantage of this fact, provided of course that nothing was said to make voters fear that the Pir would invoke spiritual penalties against them if they displease him. In paragraph 7 of List B it is not stated that the Bishop had threatened spiritual penalties against the persons who would not vote for the 1st Respondent. In the NORTH WEST GURGOAN MOHAMMEDAN CONSTITUENCY CASE it was held that when spiritual influence is alleged to have been exercised, the nature or substance of the direction issued to the religious followers should be given in the particulars. No such particulars have been furnished in paragraph 7. In the circumstances, we hold that no issues are called for in regard to paragraphs 6 and 7 and the portion of paragraph 2 of List B extracted above. Those portions of List B have therefore been struck off.

10. In paragraph 10 of the Election Petition it is urged that the result of the election was materially affected on account of systematic appeals to vote on grounds of caste or religion and the particulars of that allegation are given in List C. The latter part of List C reads:—"Besides these, all the three respondents who belong to the Nadar Caste appealed to their caste men systematically as against the petitioner not to vote in his favour on ground of caste, and as between themselves they imported religion and appealed to their community on ground of religion as the 3rd Respondent was a Hindu and 1 and 2 respondents are Christians. They conducted this propaganda both in public meetings and by means of pamphlets widely circulated. The measure of the injury caused to the petitioner in the election may be realised from the fact that the Nadar Community formed the major portion of the Constituency. This was a general feature in the campaign of the Respondents ignoring the very foundation of the Constitution providing for a secular State." This is only a vague and indefinite allegation. The places and times at which the appeals were made, have not been disclosed in the list, and fresh particulars cannot be allowed to be furnished at this stage. No issue is therefore framed on this part of List C and the same is struck off.

11. Paragraph 11 and List D relate to the corrupt practices of bribery and treating. The instance given in paragraph 1 of List D appears *prima facie* to be only a donation given in charity and not a bribe. No doubt, it can be viewed as a case of bribery if corrupt motive is alleged. In that case, the petitioner was bound to give in the list the particulars of the voters who were induced to vote for the 1st Respondent by the gift of Rs. 500 to Sundara Raj. No such particulars are given in the list. Similarly in the case of treating in paragraph V of List D the names of the prominent members of the coastal village who were treated, have not been specified, nor is the village to which they belong specified. The other allegations in paragraph V do not constitute the corrupt practice of bribery and also lack in necessary particulars. Paragraphs I and V of List D are therefore struck off, and no issues are framed in regard to the allegations therein. The petition asking us to call for further particulars from the petitioner is dismissed as regards the portions of the Election Petition we have struck off. In regard to those portions we consider that it is not an amplification of particulars that is needed, but furnishing of fresh particulars which cannot be allowed. Further and better particulars in regard to the allegations in the Election Petition on which issues have been framed will be called for after the examination of the petitioner, if found necessary.

(Sd.) G. KUMARA PILLAI, *Chairman.*

(Sd.) A. H. BILILI, *Member.*

(Sd.) R. NARAYANA PILLAI, *Member.*

Dated, 16th October, 1952.

[No. 19/40/52-Elec.111.]

P. S. SUBRAMANIAN,  
Officer on Special Duty.

